

## Juridical Analysis of Notary Responsibilities in the Deed Made When His Term of Office Ends (Retirement) Judging

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**Abstract.** *The purpose of this research is to analyze and find out: 1). Accountability Notary to the deed he made after his term of office ended (retirement). 2) Legal settlement if legal problems are found after the end of the Notary's term of office. The approach method in this research is normative juridical which refers to the legal norms contained in the legislation. The data used are primary and secondary data obtained through interviews and literature study, data analysis was carried out by analytical descriptive. The results of the research concluded: 1). The Notary's responsibility for the deed he made after his term of office ends (retirement), that is, he can still be held civilly responsible if there are problems related to the deed he made. Regarding the responsibilities of a Notary that ends in accordance with the end of the Notary's term of office, it does not cause the deed he made to be of no value or binding on the parties. An authentic deed made before a notary remains valid as perfect evidence even though the notary who made the deed has ended his term of office. 2) Legal settlement if later it is found that legal problems occur after the end of the Notary's term of office, that is, if an authentic deed made before a Notary has proven to be null and void and is detrimental to the parties, the Notary can be held accountable even though the Notary's term of office has ended or has retired. The notary can be sued in court with a claim for compensation costs along with interest by the parties who have made a deed to him for the losses caused by the notary so that the deed is legally invalid as an authentic deed. This can be done by the parties as long as the authentic deed is null and void, it is still within the grace period and has not expired.*

**Keywords:** *Authentic; Deed; Liability; Notary; Retirement.*

### 1. Introduction

Notary institutions are one of the social institutions that exist in Indonesia, these institutions arise from the need in the association of fellow human beings who require evidence regarding civil law relationships. With the enactment of Act

No. 30 of 2004 in conjunction with Act No. 2 of 2014 concerning the Position of a Notary concerning the Position of a Notary, is expected to provide good legal protection for the community and for the Notary himself.<sup>1</sup>

The position of a Notary as a functional in society is still being respected. A Notary is usually considered an official from whom a person can obtain reliable advice. Everything written and determined (constatir) is true, he is a strong document maker in a legal process.<sup>2</sup> Notary authentic deed is perfect evidence for the parties who carry out certain legal actions that contain the rights and obligations of the parties which are clearly described in the authentic notary deed.<sup>3</sup> Based on Article 1870 of the Civil Code and Article 1871 of the Civil Code, the authentic deed is a perfect means of proof for both parties and their heirs as well as all those who have rights from them regarding what is contained in the deed.<sup>4</sup>

The responsibilities of the Notary as a public official related to material truth are divided into four, namely the civil responsibilities of the Notary to the material truth of the deed he made, the Notary's criminal responsibility to the material truth in the deed he made, the Notary's responsibility based on the Notary position regulations (UUJN) on the material truth in the deed he made, and the responsibilities of the Notary in carrying out his duties based on the Notary's code of ethics.<sup>5</sup>

Based on Article 8 UUJN, the term of office of a Notary ends, namely when he dies, has reached the age of 65 years and can be extended according to the Notary's health and the Notary's request. So if the Notary is 65 (sixty five) years old, his term of office ends, and it can be extended for 2 (two) years so that the Notary's working period is 67 years in accordance with the provisions contained in Article 8 of the UUJN. The Notary whose term of office has ended must appoint or submit the protocol to the Notary appointed by the Regional Supervisory Council as the holder of the Protocol<sup>6</sup>.

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<sup>1</sup> G.H.S Lumban Tobing, (1999), *Peraturan Jabatan Notaris*, Jakarta: Erlangga, p.2.

<sup>2</sup> Tan Thong Kie, (2011), *Studi Notariat dan Serba-Serbi Praktek Notaris*, Second Printing, Jakarta: Ichtiar Baru van Hoeve, p.444.

<sup>3</sup> Abdul Bari Azed, (2005), *Profesi Notaris sebagai Profesi Mulia*, Jakarta: Media Ilmu, p.68

<sup>4</sup> Taufik Makarao, (2004), *Pokok-pokok Hukum Acara Perdata*, Jakarta: Rineka Cipta, p.100

<sup>5</sup> Habib Adjie, (2008), *Salah Kaprah Mendudukkan Notaris Sebagai Tergugat*, Jakarta: Media Notaris, p. 21

<sup>6</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

Notary Protocol is a collection of documents which are state archives that must be stored and maintained by a Notary.<sup>7</sup> The Notary Protocol concerned will be taken over by the Notary Protocol holder either appointed by the Notary himself or by the Regional Supervisory Council (MPD) or the Minister. The obligation of a Notary whose term of office has ended is to notify the MPD in writing of the end of his term of office as well as to propose another Notary as the holder of the protocol within 180 (one hundred and eighty) days or at the latest 90 (ninety) days before the Notary reaches the age of 65 years. . Even though the retired Notary's protocol has been transferred to another Notary, the responsibility for the Notary's protocol remains with the retired Notary.<sup>8</sup>

## 2. Research Methods

The approach method used in this research is a normative juridical approach. Primary and secondary data sources obtained by interview and literature review (study document). The data that has been collected both from field research and library research were analyzed using descriptive analysis methods.

## 3. Results and Discussion

### 3.1. The Notary's Accountability for the Deed He Made After His Term of Office Ends (Retirement)

The government wants a notary as a public official who is appointed and dismissed by the government and given the authority and obligation to be able to provide services to the community in helping to make agreements, make deeds and their ratification. Although referred to as a public official, a notary is not a civil servant as referred to in the laws and regulations governing personnel. Notaries are bound by government office regulations, notaries do not receive salaries and pensions from the government, but receive salaries from honoraria or fees from their clients.<sup>9</sup>

A notary can be said to be a government employee who does not receive a salary from the government, a notary is retired by the government, but does not receive a pension from the government. Therefore, it is not only notaries who must be protected but also the consumers, namely the public who use notary services.<sup>10</sup> Notaries as public officials, in the sense of having authority with exceptions, categorize notaries as public officials, in this case public which

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<sup>7</sup>Andi Junianto, (2007), *Notaris dan Protokol Notaris*, Bandung: Eresco, p. 12

<sup>8</sup>Anke Dwi Saputro, (2010), *Jati Diri Notaris Indonesia Dulu, Sekarang, dan di Masa Datang*, Jakarta: Gramedia Pustaka, p. 40

<sup>9</sup>Abdul Ghofur Anshori, (2009), *Lembaga Kenotariatan Indonesia*, Yogyakarta: UII Press, p. 16

<sup>10</sup>Suhrawardi K. Lubis, (2006), *Etika Profesi Hukum*, Jakarta: Sinar Grafika, p. 34

means law. Notaries as public officials do not mean the same as public officials in the field of government who are categorized as state administrative bodies or officials, this can be distinguished from the products of each of these public officials. Notaries as public officials, the final product is an authentic deed, which is bound by the provisions of civil law, especially in the law of evidence.<sup>11</sup>

The main task of a notary is to make an authentic deed, both determined by legislation and by the wishes of certain people and legal entities that need it.<sup>12</sup>As for the word authentic, according to Article 1870 of the Civil Code, it gives the parties who make it a perfect proof. The location of the importance of a notary, that a notary is given the authority to make a deed containing the formal truth in accordance with what the parties have notified to the notary, so that it can be used as a means of proof in a legal dispute that is used to remind events that have occurred so that it can be used for proof purposes.<sup>13</sup> In the sense that what is stated in the authentic deed is basically considered true as long as there is no evidence to the contrary<sup>14</sup>.

Regarding the responsibilities of a Notary as a General Officer related to material truth, it is divided into 4 (four) points, namely the responsibilities of a Notary as a whole. civil, the Notary's criminal responsibility, the Notary's responsibility to the material truth in the deed he made and the Notary's responsibility in carrying out his duties based on the Notary's code of ethics.<sup>15</sup>

Regarding the oath, a Notary promises to maintain his attitude, behavior and will carry out his obligations in accordance with the professional code of ethics, honor, dignity and responsibilities as a Notary. There is a relationship between the Notary's code of ethics and UUJN giving meaning to the essence of the Notary profession itself. The UUJN and the Notary Code of Ethics require that Notaries get a reference in carrying out their duties as public officials, besides being subject to UUJN, they must also obey the professional code of ethics and must be responsible for the people they serve. With this relationship, a Notary who ignores the nobility of the dignity of his position in addition to being subject

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<sup>11</sup> Habib Adjie, op.cit., p.31

<sup>12</sup> Supriadi, (2006), *Etika & Tanggung Jawab Profesi Hukum di Indonesia*, Jakarta: Sinar Grafika, p.37

<sup>13</sup>Valentine Phebe Mowoka, "Pelaksanaan Tanggung Jawab Notaris Terhadap Akta Yang Dibuatnya", *Jurnal Lex et Societatis*, Edition No.4 Vol. II, 2014, p.62

<sup>14</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

<sup>15</sup>Abdul Ghofur, Op.Cit, p. 34

to moral sanctions, reprimanded or dismissed from his professional membership, can also be dismissed from his position as a Notary.<sup>16</sup>

Apart from the Notary's responsibility, the law itself provides limits regarding the Notary's responsibility so that not all losses are borne by the Notary. Regarding the provisions governing the limits of the Notary's responsibility, it can be seen in Article 65 of the UJN that the Notary, Substitute Notary, Special Substitute Notary and Temporary Notary Officials are responsible for every deed they make even though the Notary protocol has been submitted or transferred to the Notary protocol keeper.

As an official, the limit of authority is when he is still an official as specified in the legislation. Likewise with Notary Publicin carrying out their duties and positions are limited by age, so that the Notary has a time limit in carrying out his duties. This is in accordance with Article 8 paragraph (1) letter b of the UJN, which states that a Notary resigns or is honorably dismissed from his position because he is 65 years old. Furthermore, Article 8 paragraph (2) of the UJN states that the age provision as referred to in paragraph (1) letter b can be extended to the age of 67 years taking into account the health of the person concerned.

However, in accordance with the provisions of the time limit in carrying out duties position there is no limit on the notary's liability for the deed he made. Article 65 of the UJN stipulates that a Notary, a substitute Notary, a special substitute Notary, and a temporary Notary official shall be responsible for every deed made even though the Notary protocol has been submitted and transferred to the Notary protocol keeper. This means that even though he has resigned from his position and all deeds made by a notary have been submitted or transferred to the custodian of the notary protocol, he must still be responsible for the deed he made. The Notary Protocol which is a collection of documents and as a state archive has a very important meaning for a Notary in carrying out his office. Therefore, the obligation to prepare, keep, and maintain a Notary protocol for a Notary is mandatory or absolute.<sup>17</sup>

The end of a notary's term of office does not end the notary's responsibility for the deed he made. The provisions related to the notary's responsibility for the deed he made are contained in Article 65 of the JNP Law. The end of a Notary's term of office (pension / werda) does not end the Notary's responsibility for the deed he made, this provision is related to the Notary's responsibility for the

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<sup>16</sup>Mahalia Nola Pohan, (2011), Tinjauan tentang Pembatalan Akta Notaris yang Penandatanganananya Dilakukan di Dalam Rumah Tahanan, *Tesis Magister Kenotariatan*, Universitas Sumatera Utara, p. 87

<sup>17</sup> Ibid.

deed he made which is contained in Article 65 of the UJNP which states that: "Notary, Substitute Notary and Temporary Notary Officials responsible for every deed he made even though the Notary Protocol has been submitted or transferred to the custodian of the Notary Protocol."<sup>18</sup>

Article 65 UJN, the Notary is responsible for the deed that has been made even though the Notary protocol has been submitted to the custodian of the protocol, but Article 65 of the UJN raises unclear legal implications, because Article 65 UJN does not explain specifically about the time limit for the Notary's responsibility after his term of office ends. And Article 65 of the UJN does not clearly specify how long the Notary must be responsible for the deed he has made.<sup>19</sup>

The notary's responsibility for the deed he made after his term of office ended (pension/werda), that is, he can still be held civilly responsible if there are problems related to the deed he made. In practice, notaries are often made or positioned as defendants by other parties, who feel that the legal actions they have taken in the deed are categorized as acts or acts against. In the context of notarial law, the task of a notary is only to formulate and confirm the wishes of the parties in the form of an authentic deed, taking into account the applicable law.

The provisions in Article 65 of the UJN only apply to notaries who are still in office, so that notaries who are still in office receive legal protection. Werda Notary does not get legal protection from the Notary Honorary Council, while Werda Notary still has to be responsible for the deed he made in accordance with the explanation in Article 65 UJNP, but there is no legal protection against it. The Law on the Position of Notary does not specifically regulate legal protection for Werda Notaries so that there is a blurring of norms over Article 65 of the Law on the Office of Notaries regarding the deadline for accountability of a notary whose term of office has ended, so that in the end the rule gives rise to various interpretations.<sup>20</sup>

Regarding the responsibilities of a Notary that ends in accordance with the end of the Notary's term of office, it does not cause the deed he made to be of no value or binding on the parties. An authentic deed made before a notary remains valid as perfect evidence even though the notary who made the deed

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<sup>18</sup> Silvyana Dwi, Perlindungan Hukum Terhadap Werda Notaris Dalam Organisasi Ikatan Notaris Indonesia Atas Akta Yang Dibuatnya, *Law Journal Of Mai Wandeu (LJMW)*, Volume 1 Issue 2, May 2021, p.126

<sup>19</sup>Rico Andriansyah, Tanggung Jawab Hukum Notaris Terhadap Akta Yang Dibuatnya Setelah Berakhir Masa Jabatannya Di Tinjau Dari Pasal 65 Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, *Jurnal Ilmiah Hukum Kenotariatan* , Repertorium Vol.5 Issue 2, p. 80

<sup>20</sup>Silvyana Dwi, op.cit, p. 127

has ended his term of office.<sup>21</sup> To be able to find out how long an authentic deed is null and void, it can be held accountable by the parties who feel aggrieved, it can be seen from the expiration of the deed.<sup>22</sup>

The notary's responsibility for the deed he made after his term of office ended (retired) relates to several things contained in Article 65 of the Notary Position Act, including the notary's responsibility for the deed he made depending on the expiration date of prosecution in criminal and civil law, namely:<sup>23</sup>

1. Violation of the criminal provisions related to falsifying letters or fake documents where based on the provisions of Article 263 and Article 264 of the Criminal Code the threat of a sentence of at least 6 years, the expiration date of the prosecution is related to the provisions of Article 78 paragraph (1) number 3 of the Criminal Code which states that criminal charges will abolished after 12 years against a crime punishable by a prison sentence of more than 3 years. So, from this provision it can be understood that after the notary is 77 years old, he can no longer be held accountable. Assuming the notary's term of office ends at the age of 65 years plus 12 years of expiry of the prosecution.
2. Violation of the civil provisions associated with the provisions on the expiration date for civil prosecution in Article 1967 BW where it is stated that the time limit for prosecution will end after the 30 year grace period has passed. So, after the age of 95 years, the notary can no longer be held accountable for the authentic deed he made. Assuming the notary's term of office has ended at the age of 65 years plus an expiration date of 30 years. Taking into account the provisions of legal protection as regulated in the Law on Notary Positions mentioned above apply when the notary is still in his position as a public official.
3. In terms of accountability, it is clearly stated in Article 65 of the Law on Notary Positions, that Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Officials are responsible for every deed made even though the Notary protocol is submitted or transferred to the protocol keeper. This shows that the provisions of the law determine that the notary's responsibility does not end with the end of his term of office, but in terms of protection in connection with the liability that does not end there is no explanation in the legislation.

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<sup>21</sup> Selly Masdalia, Tanggung Jawab Notaris Terhadap Akta Otentik Yang Berakibat Batal Demi Hukum Pada Saat Berakhir Masa Jabatannya, *Tesis Program Pascasarjana*, Universitas Udayana Denpasar 2014, p.127

<sup>22</sup> Retnowulan Sutantio and Iskandar Oeripkartawinata, (2005), *Hukum Acara Perdata dalam Teori dan Praktek*, Bandung: Mandar Maju, p.205.

<sup>23</sup> Interview with Mr. Suyanto, INI Member of Semarang City, June 30, 2021

In accordance with the provisions of Article 65 of the Notary Position Act, even though the Notary has resigned from his position, the Notary remains responsible for life for the deed he has made. This is based on the presence of a Notary to make an authentic deed as perfect evidence for the parties. Therefore, the Notary in making the deed must meet standard procedures, so that the Notary's responsibility for the deed he makes must be attached to the Notary for life.<sup>24</sup>

### 3.2. Legal Settlement If Later Legal Problems Are Found After the End of Notary's Term

As a public official, a Notary is burdened with responsibility for his actions in connection with the authorities and obligations that have been determined by the laws and regulations. The authority of a Notary is based on statutory provisions as a limitation so that the position of a Notary does not deviate from what is stipulated.<sup>25</sup> Thus, a Notary who acts outside his authority can be categorized as having committed an act that violates his authority. So that the product or notary deed is not legally binding or cannot be implemented (non-executable). Parties who feel aggrieved by the actions of a Notary outside the authority can file a lawsuit in court.<sup>26</sup>

The basic principle of the occurrence of a crime for a Notary is that if a Notary deviates from a deed he made, giving rise to a criminal case, the Notary must be criminally responsible for what he has done. Criminal liability is born with the continuation of objective reproaches (*verwijbaarheid*) against actions that are declared as criminal acts based on the applicable Criminal Law, and subjectively to perpetrators who meet the requirements to be subject to criminal charges because of their actions.<sup>27</sup>

The occurrence of a punishment against a Notary based on a deed made by or before a Notary as part of the implementation of the duties of a Notary's position or authority, without regard to legal rules relating to the procedure for making a deed and only based on the provisions of the Criminal Code (KUHP), shows there has been a misunderstanding or interpretation of the position of the Notary, while the authentic deed made by the Notary as evidence in Civil Law. Criminal sanctions are the *ultimum remedium*, which is the last remedy, if

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<sup>24</sup> Ibid.

<sup>25</sup> Muhammad Affandi, (2009), *Kewajiban Dan Wewenang Majelis Pengawas Notaris*, Jakarta: Rajawali Press, p.25.

<sup>26</sup> Irwanda, Tanggung Jawab Notaris Setelah Berakhir Masa Jabatannya Ditinjau Dari Undang-Undang No. 30 Tahun 2004 Jo Undang-Undang No. 2 Tahun 2014 Tentang Jabatan Notaris, Jurnal Hukum, Faculty of Law, Universitas Sumatera Utara, Medan, p.10

<sup>27</sup> Dwidja Priyatno, (2004), *Kebijakan Legislasi tentang sistem pertanggungjawaban Pidana Korporasi di Indonesia*, CV. Utomo, p.30



sanctions or other measures in other branches of law do not work or are deemed ineffective.<sup>28</sup> Notary who is proven to have intentionally committed, ordered to do, participated in, namely the act of making and falsifying letters, using or ordering other people to use fake letters, ordering to enter false information into an authentic deed; as well as receiving gifts or promises to move them to do something or not to do something related to their position, they are subject to sanctions if proven guilty.

The above provisions related to sanctions given to Notaries in the code of ethics of the Indonesian Notary Association (INI) can be implemented but must not conflict with Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions. The application of sanctions is in accordance with the procedures for examining Notaries based on Ministerial Regulation Number M.02.PR.08.10 of 2004, although the authority to impose sanctions is divided between the examining board, but when the report finally reaches the level (for example) the Central Examining Council, then in accordance with its authority, the Central Examining Council may issue a decision in the form of dishonorable dismissal; This means that the imposition of sanctions must be sequential, but adjusted to the level at which the examination is carried out.<sup>29</sup>

In the practice of Notary in Indonesia, it is often found that a Notary is being sued by parties, both parties in the deed and interested parties (parties outside the deed). The basis of the lawsuit by the parties is because of the loss arising from the deed made by the Notary. The lawsuit is addressed to this Notary, not only when the Notary is active in carrying out his position, but also when the Notary has been deactivated from his position or retired. Sometimes the claims of the parties are also unfounded and unrelated to the subject matter so that the Notary is made a defendant or co-defendant or in a criminal case is sued as a defendant.

Settlement if an authentic deed made before a Notary has proven to be null and void and is detrimental to the parties, the Notary can be held accountable even though the Notary's term of office has ended or has retired. This can be done by the parties as long as the authentic deed is null and void, it is still within the grace period and has not expired. The expiry date of the deed is from the date the deed was made. The notary can be sued in court with a claim for compensation costs along with interest by the parties who have made a deed to him for the losses caused by the notary so that the deed is legally invalid as an authentic deed. Against the claim for compensation costs along with interest for the error of making the deed that has been carried out by the Notary,

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<sup>28</sup>Habib Adjie, op.cit., p. 126

<sup>29</sup>Soegianto, Op.cit, p. 90-100

he notary bears responsibility for any work assigned to him by the client. Every job will always be accompanied by the things that are his responsibility. Responsibility is human awareness of intentional or unintentional behavior or actions. Responsibility also means acting as an embodiment of awareness of one's obligations. Responsibility can also be interpreted as acting appropriately without needing to be warned. While being responsible is an attitude of independence and sensitivity to others. It can also be interpreted that responsibility is the awareness that exists in a person that each of his actions will affect others or himself.<sup>30</sup>

#### 4. Conclusion

The Notary's responsibility for the deed he made after his term of office ends (retirement), that is, he can still be held civilly responsible if there are problems related to the deed he made. In practice, notaries are often made or positioned as defendants by other parties, who feel that the legal actions they have taken in the deed are categorized as acts or acts against. Regarding the responsibilities of a Notary that ends in accordance with the end of the Notary's term of office, it does not cause the deed he made to be of no value or binding on the parties. An authentic deed made before a notary remains valid as perfect evidence even though the notary who made the deed has ended his term of office. Legal settlement if it is later found that legal problems occur after the end of the Notary's term of office, namely if an authentic deed made before a Notary has been proven to be null and void and detrimental to the parties, the Notary can be held accountable even though the Notary's term of office has ended or retired. This can be done by the parties as long as the authentic deed is null and void, it is still within the grace period and has not expired. The expiry date of the deed is from the date the deed was made. The notary can be sued in court with a claim for compensation costs along with interest by the parties who have made a deed to him for the losses caused by the notary so that the deed is legally invalid as an authentic deed.

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<sup>30</sup> Abdul Jalal, Sri Endah Wahyuningsih, Keterlibatan Pejabat Notaris Terhadap Perbuatan Melawan Hukum Dan Turut Serta Melakukan Tindak Kejahatan Dalam Pemalsuan Dokumen, *Jurnal Akta*, Vol 5 No 1 March 2018, p.231

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*Regulation:*

Act No. 30 of 2004 in conjunction with Act No. 2 of 2014 concerning the Position of Notary